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Dkt. 0687/74768-AA/JPW/GJG/ACK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Michael Wayne Graham and Robert Norman Rice

Serial No. : 10/759,841

Examiner: Whiteman, Brian A.

Filed : January 15, 2004

Art Unit: 1635

For : SYNTHETIC GENES AND GENETIC CONSTRUCTS

30 Rockefeller Plaza
20TH Floor
New York, New York 10112
June 15, 2010

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. § 1.97(c)

In accordance with the duty of disclosure under 37 C.F.R. § 1.56, Applicants direct the Examiner's attention to the following documents:

1. January 23, 2003 Statutory Declaration of Neil Andrew Smith, including Exhibits NAS1-NAS25, submitted In re Opposition to Australian Patent Application No. 743316, and disclosed in connection with the subject application in an October 25, 2007 Information Disclosure Statement (**Exhibit 1**);
2. May 1, 2008 Declaration Under 37 C.F.R. § 1.131 of Peter Michael Waterhouse, Michael Wayne Graham, Ming-Bo Wang and Neil A. Smith, including Exhibits 1 to 5, submitted May 1, 2008 in connection with U.S. Serial No. 09/287,632, filed April 7, 1999, and

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disclosed in connection with the subject application
in a September 24, 2009 Information Disclosure
Statement (**Exhibit 2**);

3. May 8, 2008 Declaration Under 37 C.F.R. § 1.131 of
Peter Michael Waterhouse, Michael Wayne Graham, and
Ming-Bo Wang, including Exhibits 1 to 3, submitted
July 2, 2008 in connection with U.S. Serial No.
11/364,183, filed March 1, 2006, and disclosed in
connection with the subject application in a
September 24, 2009 Information Disclosure Statement
(**Exhibit 3**); and
4. Currently pending claims of U.S. Serial No.
09/287,632, filed April 7, 1999, particularly claims
63-65, 102-103, 109, and 119-120 (**Exhibit 4**).

Item 1 was considered by the Examiner in the subject
application as indicated by the initialed Form PTO-1449
(Substitute) returned to Applicants with a January 8, 2008
Office Action. Items 2-3 were considered by the Examiner in
the subject application as indicated by the initialed Form
PTO-1449 (Substitute) returned to Applicants with a March 9,
2010 Office Action.

Items 1-4 are being listed on Form PTO-1449 (Substitute)
attached hereto as **Exhibit A**. Copies of items 1-4 are attached
hereto as **Exhibits 1-4**, respectively.

The January 23, 2003 Declaration in paragraph 29 refers to
notebook pages submitted as Exhibit NAS24 thereto recording

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attempts to construct a chimeric DNA encoding a double stranded RNA in the form of a hairpin loop. One chimeric DNA construct described in the notebook pages, if it had been successfully made, would have comprised two copies of a 0.75 kb fragment of the cDNA copy of the Potato Virus Y RNA genome (PVY) in inverted orientation under control of a single 35S promoter and further comprising a non-complementary sequence of about 50 nucleotides between the PVY fragments. The experiments recorded in the notebook pages submitted as Exhibit NAS24 to the January 23, 2003 Declaration were performed at CSIRO Plant Industry laboratories in Canberra, Australia, i.e. not in this country, by persons not listed as inventors on the subject application prior to the earliest effective filing date of the subject application.

The May 1, 2008 Declaration in paragraphs 4-17 describes with reference to notebook pages submitted as Exhibit 1 thereto the construction of a chimeric DNA comprising two copies of a 0.75 kb fragment of the cDNA copy of the Potato Virus Y RNA genome (PVY) in inverted orientation under control of a single CaMV 35S promoter and further comprising intron 2 of the *Pdk* gene from *Flaveria trinervia* in the transcribed region of the chimeric DNA. The intron was approximately 0.77kb in length. The experiments recorded in the notebook pages submitted as Exhibit 1 to the May 1, 2008 Declaration were performed at CSIRO Plant Industry laboratories in Canberra, Australia, i.e. not in this country, by persons not listed as inventors on the subject application prior to the earliest effective filing date of the subject application.

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The May 1, 2008 Declaration in paragraphs 18-26 and 28-39 describes with reference to notebook pages submitted as Exhibits 2 and 4-5 thereto the construction of another construct. The construction of the same construct is also described in paragraphs 4-23 of the May 8, 2008 Declaration with reference to Exhibits 1-3 to the May 8, 2008 Declaration. The construct described in both the May 1, 2008 Declaration and in the May 8, 2008 Declaration is a chimeric DNA construct encoding an RNA comprising sense and antisense nucleotide sequences targeted to a β -glucuronidase gene (GUS) in which the sense and antisense nucleotide sequences were designed to basepair over about 558 bases. The construct further comprised a spacer sequence of approximately 1 kb. The experiments recorded in the notebook pages submitted as Exhibits 2 and 5-6 to the May 1, 2008 Declaration, and also submitted as Exhibits 1-3 of the May 8, 2008 Declaration (a) were performed at CSIRO Plant Industry laboratories in Canberra, Australia, i.e. not in this country, by persons not listed as inventors on the subject application prior to the earliest effective filing date of the subject application, and (b) are the same experiments referred to on at least pages 36 and 38-39 of U.S. Serial Nos. 09/287,632, 11/364,183, and 11/841,737.

The current Assignee of record of the subject application, CSIRO, requested the undersigned attorneys to review whether the correct inventors are listed as to the pending claims in the subject application.¹ During my review, I did not identify

¹ The current Assignee of record had argued that the Australian application which derives from the same priority document as the subject application incorrectly listed inventors of the invention claimed therein under Australian law. See, e.g. Statement of Grounds and Particulars of Opposition, submitted in In re Opposition to Australian Patent Application No. 743316, which was disclosed in the October 25, 2007 Information Disclosure

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any information which I found to necessitate a change of inventorship of the subject application. The correct inventors of the invention recited by the pending claims of the subject application are different from the named inventors of the inventions recited by claims of U.S. Serial Nos. 09/287,632, 11/364,183, and 11/841,737, and are different from the individuals who conducted the experiments recorded in laboratory notebook pages referenced in the January 23, 2003, May 1, 2008 and May 8, 2008 Declarations. Such information may be considered material by an Examiner to the patentability of the pending claims.

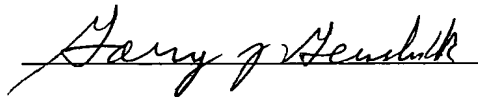
According to 37 C.F.R. § 1.97(c), a Supplemental Information Disclosure Statement filed after the period specified in 37 C.F.R. § 1.97(b) shall be considered if accompanied by the fee set forth in 37 C.F.R. § 1.17(p) or a statement under 37 C.F.R. § 1.97(e). The required fee set forth in 37 C.F.R. § 1.17(p) is one hundred eighty dollars (\$180.00) and a check for this amount is enclosed with the Amendment in Response to March 9, 2010 Office Action, Summary of April 8, 2010 Examiner Interview, and Supplemental Information Disclosure Statement being filed concurrently. Accordingly, this Supplemental Information Statement shall be considered.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

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No fee is deemed necessary in connection with the filing of this Supplemental Information Disclosure Statement. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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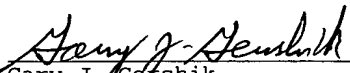
 6/15/10
Gary J. Gershik Date
Reg. No. 39,992

EXHIBIT A